

APPEAL NO. 023088  
FILED JANUARY 31, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 18, 2002. Resolving the sole certified disputed issue before her, the hearing officer decided that the Independent Review Organization's (IRO) "decision and order is [sic] supported by a preponderance of the evidence." With respect to what is deemed a jurisdictional argument raised by the appellant (carrier), the hearing officer determined that she was acting within her province in resolving the IRO issue certified from the benefit review conference. The carrier filed an appeal, arguing that the respondent's (claimant) failure to request the carrier to reconsider its initial denial of the claimant's request for precertification for her spinal surgery prior to the claimant's requesting an IRO determination, was violative of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §133.308(e) (Rule 133.308(e)). Thus, the carrier argued that because the claimant failed to comply with the request for reconsideration portion of the rule, the hearing officer did not have jurisdiction to address the merits (the certified issue) of the claim, as the claimant's compliance with the rule was jurisdictional. The carrier argued, in the alternative, that the record did not support the hearing officer's conclusion that the IRO's decision is supported by a preponderance of the evidence. The claimant responds, contending that the hearing officer did not abuse her discretion and that her decision was supported by the medical evidence in the record and should be affirmed.

DECISION

Because a complete record of the CCH is not available for our review, we reverse and remand.

We remand this case to the hearing officer as it appears that the complete record from the CCH did not reach the Appeals Panel. Specifically, the hearing officer notes in her Decision and Order that she entered into evidence as Hearing Officer's Exhibit No. 2, the "TWCC file from Medical Review." We have performed a thorough review of the record as it came to us, and we found no documents identified as Hearing Officer's Exhibit No. 2, nor did we find documents that we would have expected to be in such an exhibit, such as a completed "Medical Dispute Resolution Request/Response" (TWCC-60). Therefore, and in order to perform our statutory duty of a full review of the record from the CCH, we remand this case to the hearing officer for only one reason: we instruct her to complete the record by identifying the documents she reviewed and to which she referred as Hearing Officer's Exhibit No. 2, the "TWCC file from Medical Review," and to forward the correctly identified and complete exhibit to the Appeals Panel for a final determination of this matter.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision

must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the carrier is **TEXAS POLITICAL SUBDIVISIONS JOINT SELF-INSURANCE FUNDS** and the name and address of its registered agent for service of process is

**TIM OFFENBERGER  
12720 HILLCREST, SUITE 100  
DALLAS, TEXAS 75230.**

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Terri Kay Oliver  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge